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National Cargo Bureau, Inc. and Marine Clerks Association, Local 63, International Longshore and Warehouse Union, AFL-CIO. Case 21-CA-34287.

February 13, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND WALSH

Pursuant to a charge filed on November 14, 2000, the General Counsel of the National Labor Relations Board issued a complaint on December 5, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 21-RC-20229. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On December 27, 2000, the Acting General Counsel filed a Motion for Summary Judgment. On December 29, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response opposing the motion and requesting oral argument.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification based on its contention, raised and rejected in the representation proceeding, that the Union is disqualified from representing the unit employees because of a conflict of interest.¹

¹ The Respondent's answer to the complaint admits that the Union filed the charge on November 14, 2000, but denies that the charge was served on the Respondent on November 16, 2000. Although the Acting General Counsel has not established in this proceeding that the charge was served on the Respondent on November 16, 2000, the Acting General Counsel has attached to his motion copies of the charge and an affidavit of service stating that the charge was re-served on the Respondent and its counsel by regular mail dated November 29, 2000. The Respondent has not challenged the authenticity of those documents in response to the Notice to Show Cause. Accordingly, we find that the Respondent's denial of this complaint allegation does not raise any issues warranting a hearing.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.² The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent admits, that the Union requested the following information from the Respondent by letter dated October 11, 2000:

1. An up-to-date seniority roster which includes the name, hire date, job classification, rate of pay, and shift assignment of each employee in the bargaining unit.
2. Copies of the current Medical, Hospital, Dental, Vision, Long Term Disability, Pension Plan booklets and descriptions for any other benefits offered to employees.
3. A current copy of the employee handbook, if any, and any rules and regulations published and issued to bargaining unit employees.
4. The costs to the Company, either monthly or hourly, or any benefit presently offered to employees.
5. The names of those Company representatives who have the authority to resolve on-the-job disputes or grievances.

It is well established that the foregoing type of compensation and employment information sought by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted.³ The Respondent has not at-

² We note that the Acting General Counsel's motion mistakenly asserts that the Respondent did not request review of the Regional Director's August 18, 2000 Decision and Direction of Election in which the Regional Director rejected the Respondent's contention that the Union should be disqualified from representing staff surveyors because of the existence of a conflict of interest. As the Respondent correctly points out in its response to the Notice to Show Cause, the Respondent did, in fact, file a request for review, which was denied by the Board in an unpublished order dated September 15, 2000. This erroneous assertion by the Acting General Counsel does not raise a material issue of fact warranting a hearing nor does it affect our disposition of this case.

The Acting General Counsel's motion also erroneously states that the representation petition in Case 21-RC-20229 was filed on April 29, 2000, rather than the correct date of June 29, 2000, and that the Union renewed its bargaining and information requests by letter dated November 3, 2000. These inadvertent errors are not relevant to our consideration of the Acting General Counsel's motion.

³ See, e.g., *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

tempted to rebut the relevance of the information requested by the Union. Instead, in its answer, the Respondent relies solely on its challenge to the Union's certification as the basis for its denial that it has a duty to provide the Union with the requested information. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.⁴

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation, with a facility located at 302 West Fifth Street, Suite 205, San Pedro, California, has been engaged in the marine surveying business at ports throughout the United States, including the Port of Los Angeles in San Pedro, California. During the 12-month period ending December 29, 2000, a representative period, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in locations outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held September 15, 2000, the Union was certified on September 25, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time staff surveyors employed by the Employer at its 302 West 5th Street, San Pedro, California location; excluding all office clerical employees, administrative assistants, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since about October 11, 2000, the Union has requested the Respondent to bargain and to furnish information, and, since about November 3, 2000, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after November 3, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested in its letter dated October 11, 2000.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, National Cargo Bureau, Inc., San Pedro, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Marine Clerks Association, Local 63, International Longshore and Warehouse Union, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time staff surveyors employed by the Employer at its 302 West 5th Street, San Pedro, California location; excluding all office clerical employees, administrative assistants, guards and supervisors as defined in the Act.

⁴ The Respondent's request for oral argument is denied.

(b) Furnish the Union the information requested by it on about October 11, 2000.

(c) Within 14 days after service by the Region, post at its facility in San Pedro, California, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 3, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 13, 2001

John C. Truesdale, Chairman

Wilma B. Liebman, Member

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Marine Clerks Association, Local 63, International Longshore and Warehouse Union, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time staff surveyors employed by us at our 302 West 5th Street, San Pedro, California location; excluding all office clerical employees, administrative assistants, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested in its letter dated October 11, 2000.

NATIONAL CARGO BUREAU, INC.